ARKANSAS SUPREME COURT

No. CR 05-624

NOT DESIGNATED FOR PUBLICATION	**Opinion Delivered** **June 1, 2006**
TYRONE TILLMAN Appellant	*PRO SE* APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY, CR 2003-13, HON. JOHN B. PLEGGE, JUDGE
v.	
STATE OF ARKANSAS Appellee	AFFIRMED

PER CURIAM

In 2003, Tyrone Tillman entered a plea of guilty to murder in the second degree, robbery and being a felon in possession of a firearm, and was sentenced to 240 months' imprisonment on each charge to run concurrently. In 2004, appellant filed in the trial court a *pro se* petition to correct an illegal sentence pursuant to Ark. Code Ann. §16-90-111 (Supp. 2003) and a *pro se* petition to vacate and set aside the judgment against him pursuant to Act 1780 of 2001, codified at Ark. Code Ann. §§ 16-112-201–207 (Supp. 2003). The trial court denied both petitions without a hearing, and appellant, proceeding *pro se*, has lodged an appeal here from those orders.

We do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous or clearly against the preponderance of the evidence. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

Initially, we note that appellant's brief and addendum to this court contained several deficiencies. Appellant failed to include in the addendum the original petition to vacate and set aside the judgment, the original petition to correct an illegal sentence[1], the judgment and commitment order, reports of plea negotiations signed by appellant, the departure report or the notice of appeal as required by Ark. Sup. Ct. R. 4-2(a)(8). Further, appellant did not abstract the hearing at which the trial court accepted appellant's plea of guilty.[2]

Act 1780 of 2001 provides that a writ of *habeas corpus* can issue based upon new scientific evidence proving a person actually innocent of the offense or offenses for which he or she was convicted. *See* Ark. Code Ann. §§ 16-112- 103(a)(1) and 16-112-201--207 (Supp.2003)[3]; *see also Echols v. State*, 350 Ark. 42, 44, 84 S.W.3d 424, 426 (2002) (*per curiam*). There are a number of predicate requirements that must be met under Act 1780 before a circuit court can order that testing be done. *See* sections 16-112-201 to -203.

Of significant importance in the instant matter, the act requires a *prima facie* showing of identity as an issue at trial when a petitioner contends that he is entitled to post-trial scientific testing on the ground of actual innocence. Section 16-112-202(b)(1); *Graham v. State*, 358 Ark. 296, ___ S.W.3d ___ (2004) (*per curiam*). However, when a defendant enters a plea of guilty, he has admitted that he committed the offense and identity is not a question. *Graham*, ___ Ark. at ___, ___

[1]It appears that appellant has abandoned the issue of an illegal sentence on appeal. Issues raised below but not argued on appeal are considered abandoned. *Jordan v. State*, 356 Ark. 248, 147 S.W.3d 691 (2004).

[2]In his original petition to the trial court, appellant referenced testimony from his guilty plea hearing. However, the hearing transcript was not brought up on appeal, and the record does not indicate that appellant filed a writ of *certiorari* to supplement the record on appeal to include the transcript of this hearing.

[3]Appellant filed his petition prior to the enactment of Act 2250 of 2005 with an effective date of August 12, 2005, that amended portions of the relevant statute.

S.W.3d at ___.

Here, appellant maintains that he is not challenging his guilty plea on appeal, but complains that his guilty plea was coerced and his identity was in question at the trial. As to his identity being an issue at trial, appellant has failed to bring up a record on appeal sufficient to support this claim. The party asserting error has the burden to produce a record sufficient to demonstrate prejudicial error, and this court does not consider evidence not included in the record on appeal. *Smith v. State*, 343 Ark. 552, 39 S.W.3d 739 (2001). Similarly, appellant failed to provide this court with an abstract sufficient to conduct a meaningful review of this matter. *Campbell v. State*, 349 Ark. 111, 76 S.W.3d 271 (2002) (*per curiam*). Thus, appellant failed to state a *prima facie* case of actual innocence and failed to produce any evidence to bring his petition within the purview of Act 1780 and § 16-112-201(b)(1).

Other requirements of Act 1780 are that the requested testing has the scientific potential to produce new non-cumulative evidence materially relevant to the defendant's assertion of actual innocence, and the testing requested employs a scientific method generally accepted within the relevant scientific community. Sections 16-112-202(c)(1)(B) and (C). As to what evidence should be tested and how it should be tested, appellant merely contends that he is "entitled to have all the evidence recovered at the crime scene to be tested under new technology that was not available to him at the time of his arrest and convictions."

In the instant case, appellant's petition did not meet the burden imposed by sections 16-112-202(c)(1)(B) and (C) as it failed to identify with any specificity the evidence to be tested and the scientific testing method that would produce evidence to support his claim of actual innocence. Because appellant failed to state sufficient facts in his petition in order for testing to be granted under

Act 1780, the decision of the trial court is affirmed.

Appellant argues to this court that the trial court improperly failed to hold a hearing to determine whether DNA testing should be conducted. A circuit court need not hold a hearing if the petition and the files and records show that a petitioner is not entitled to relief. Ark. Code Ann. § 16-112-205(a); *Graham*, *supra*. As appellant failed to state a *prima facie* case of actual innocence of Act 1780 and meet other requirements had not been satisfied, the trial court did not err when it did not hold an evidentiary hearing.

Affirmed.